

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, INC., a Delaware corporation; ARISTA RECORDS LLC, a Delaware limited liability company; and WARNER BROS. RECORDS INC., a Delaware corporation, : Civil Action No.: 1:07-cv-09292-LAK

Plaintiffs, : Filed Electronically

-against- : **MOTION TO AMEND COMPLAINT**

JOHN DOE, :

Defendant. :

Plaintiffs CAPITOL RECORDS, INC.; ARISTA RECORDS LLC; and WARNER BROS. RECORDS INC. (collectively, "Plaintiffs") respectfully move this Court to permit Plaintiffs to file an Amended Complaint in this matter. As reason in support of Plaintiffs' Motion, the Court is respectfully advised of the following:

1. This is an action for copyright infringement which was originally filed as a Doe case because Plaintiffs did not know the true identity of the Defendant.
2. Much of the unlawful distribution of copyrighted sound recordings over the Internet occurs via "peer-to-peer" ("P2P") file copying networks or so-called online media distribution systems. P2P networks, at least in their most popular form, refer to computer systems or processes that enable Internet users to search for files (including audio recordings) stored on other users' computers and transfer exact copies of files from one computer to another via the Internet, which can include both downloading an exact copy of that file onto the user's own computer and distributing an exact copy of that file to other Internet users on the same P2P network. P2P networks enable users who otherwise would have no connection with, or

knowledge of, each other to provide a sophisticated search mechanism by which users can locate these files for downloading and to reproduce and distribute files off of their personal computers.

3. Users of P2P networks who distribute files over a network can be identified by using Internet Protocol (“IP”) addresses because the unique IP address of the computer offering the files for distribution can be captured by another user during a search or a file transfer. Users of P2P networks can be identified by their IP addresses because each computer or network device (such as a router) that connects to a P2P network must have a unique IP address within the Internet to deliver files from one computer or network device to another. Two computers cannot effectively function if they are connected to the Internet with the same IP address at the same time.

4. Plaintiffs identified an individual using Ares on the P2P network AresWarez at IP address 216.165.62.122 on March 20, 2007 at 23:52:51 EDT distributing 214 audio files over the Internet.

5. On October 17, 2007 this Court entered an Order for leave to take immediate discovery which permitted Plaintiffs to serve a subpoena on New York University (the “University”), the Internet Service provider (“ISP”) in this instance.

6. On November 5, 2007, in response to the subpoena served upon it by Plaintiffs, the University identified the infringer in this case as Raymond Chau. Though the University provided Mr. Chau’s name, it did not provide Plaintiffs with an address for Mr. Chau. The University finally provided Plaintiffs with Mr. Chau’s address and phone number on November 13, 2007.

7. Thereafter, Plaintiffs sent a letter to Defendant notifying him of their claims for copyright infringement and encouraging him to make contact with Plaintiffs to attempt to amicably resolve this matter.

8. To date, Mr. Chau has not contacted Plaintiffs or their representatives regarding settlement.

9. Because the parties have not been able to resolve Plaintiffs' claims without further Court intervention, Plaintiffs must proceed with their claim against Mr. Chau. Accordingly, Plaintiffs seek leave to file an amended complaint naming Mr. Chau as the Defendant in this case.

WHEREFORE, Plaintiffs respectfully request this Court to enter an order permitting Plaintiffs to amend the complaint to replace "John Doe" by naming Raymond Chau as the Defendant in the above-named matter.

Dated: New York, New York
December 12, 2007

ROBINSON & COLE LLP
Attorneys for Plaintiffs

By: 

Brian E. Moran (BM-8573)
Richard J. Guida (RG-5147)
885 Third Avenue, Suite 2800
New York, NY 10022-4834
Telephone: (212) 451-2900
Facsimile: (212) 451-2999